

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1074 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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PATEL JIVABHAI MULABHAI

Versus

DY. COLLECTOR

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Appearance:

MS KUSUM M SHAH for Petitioner  
GOVERNMENT PLEADER for Respondent No. 1  
SERVED for Respondent No. 4

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CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 10/11/97

ORAL JUDGEMENT

1. The petitioner has purchased the suit land by a registered sale deed on 27th April 1978 from respondent no.4. He was granted the land as (Pasayata Service Tenure) new tenure land which could not be transferred without the permission of the Collector. Though initially the revenue entry no. 371 of this sale was

made on 4th March 1981, it was not approved by the Deputy Collector by his order dated 25th March 1982, on the ground that the sale was in breach of the condition of new tenure. Thereafter, on 10th September 1984, a show cause notice was issued to the petitioner to show cause as to why the land should not be forfeited to the Government.

2. The authorities came to the conclusion that undisputedly the land was non-transferable new tenure land and has been sold without permission.

However, the petitioner prayed that having regard to the vendor's need to sell, the lapse of time, the payment of consideration and the investment made on the land by the petitioner, the case was required to be considered for regularisation. The Secretary (Appeals), Revenue Department, held that there is no provision for regularising the same.

3. The learned Counsel for the petitioner has drawn my attention to the statutory provision in section 73-B of Bombay Land Revenue Code, 1879. It reads as follows:-

"73B. Where any occupancy, by virtue of any conditions annexed to the tenure by or under this Act, is not transferable or partible without the previous sanction of the State Government, the Collector or any other officer authorised by the State Government, such sanction shall not be given except on payment to the State Government of such sum as the State Government may by general or special order determine. "

4. It is also submitted by the learned Counsel for the petitioner that the Secretary (Appeals), by orders dated 30th January 1984 and 21st October 1985, has regularised such transfers on some conditions whereas in this case, which is decided by him on the same day i.e. on 21st October 1985, he has held that there is no provision for regularisation.

5. In view of the aforesaid, this petition is required to be allowed by directing the respondent authorities to regularise the said transaction in light of the provisions of section 73B of the Bombay Land Revenue Code and other applicable Government circulars. The impugned orders regarding forfeiting the land to the Government will stand cancelled on petitioner complying with the conditions of regularisation which might be

imposed by the authority.

Rule made absolute accordingly with no order as  
to costs.

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mhs/-